INDARJIT SINGH v. JINDER PAL

[O.C.J. (Chua J.) June 5, 1975]
[Singapore — Divorce No. 321 of 1974]

Family Law — Divorce — Marriage in Johore Bahru — Parties domiciled in Singapore — Female party under aged — Whether marriage valid — Women's Charter (Cap. 47), ss. 3(1) & 9.

This matter arose from a petition by the plaintiff for the dissolution of his marriage to the respondent. The parties were married at the Marriage Registry, Johore Bahru, under the Civil Marriage Ordinance, 1952 of Malaysia. At the time of the marriage the parties were Singapore citizens and domiciled in Singapore, and the petitioner was 23 years of age and the respondent fifteen years of age.

Held: (1) as at the time of the marriage both the parties were citizens of Singapore and domiciled in Singapore and as the laws of Singapore prohibited a marriage where either of the parties is under the age of eighteen years, this imposed a personal incapacity on the respondent and rendered the marriage which was solemnised in Johore Bahru invalid;

(2) the petition for divorce must therefore be dismissed.

Case referred to:-

(1) *Brook* v. *Brook* 65 E.R. 746; 11 E.R. 703.

DIVORCE.

Gurbachan Singh for the petitioner.

Respondent unrepresented.

Chua J.: This is a petition presented by the petitioner praying for the dissolution of his marriage to the respondent on the ground of desertion.

The respondent did not enter appearance and was not present or represented at the hearing of the petition.

The short facts are these. The parties were married at the Marriage Registry, Johore Bahru, Malaysia, on January 22, 1967, under the Civil Marriage Ordinance, 1952, of Malaysia. At the time of the marriage both the parties were Singapore citizens and were living and were domiciled in Singapore and the petitioner was twenty three and the respondent was fifteen years of age. After the marriage they lived and cohabited at 101-D Coronation Road, Singapore. The parties are still Singapore citizens and are still living and are domiciled in Singapore.

The petitioner in his evidence said that it was an arranged marriage; that one week after the marriage the respondent's mother came to the matrimonial home, and the respondent left the home with the mother; that before she left the respondent said that she was not happy living with the petitioner; and that he made several attempts to get her to come back but was unsuccessful. The petitioner when questioned by the court said that they could not get married in Singapore in 1967 as the respondent was under age.

Section 9 of the Women's Charter, 1961 (Ordinance No. 18 of 1961 and now Chapter 47 of the Singapore Statutes Revised Edition, 1970), provides:

"any marriage purported to be solemnized under this Part of this Ordinance (solemnization of marriages) shall be invalid if at the date of the marriage either party is under the age of eighteen years unless the solemnization of such marriage was authorised by a licence granted by the Minister under the provisions of section 20 of this Ordinance."

This section was amended by Act No. 9 of 1967 (which came into operation on June 2, 1967) by deleting the words "under this Part of this Ordinance" and substituting therefor the words "in Singapore" and by deleting the word "invalid" and substituting therefor the word "void"

Section 31(1) of the Civil Marriage Ordinance, 1952, of Malaysia, however, provides:

"A marriage purported to be solemnized under this Ordinance shall be void if at the date of such marriage the male party was under the age of sixteen or the female party under the age of fourteen."

The question for decision in this case is, whether the marriage celebrated on January 22, 1967, at Johore Bahru, between the petitioner and the respondent, they being citizens of Singapore then domiciled and living in Singapore, is to be considered valid in Singapore, marriage of a female of fifteen years of age being permitted by the law of Malaysia.

Age of marriage is a matter of capacity and it is a well-recognised principle of law that the question of personal capacity to enter into any contract, including a contract of marriage, is to be decided by the law of domicile. It is also a well-recognised principle of law that the law of a country where a marriage is solemnized is the effective law so far as the form of marriage is concerned.

Section 3(1) of the Women's Charter provides:

"Subject to the provisions of subsection (2) of this section this Ordinance shall apply to all persons resident in Singapore and shall also apply to all persons domiciled in Singapore who are resident outside Singapore."

This section was amended by Act No. 9 of 1967 by deleting the expression "Subject to the provisions of subsection (2) of this section" and substituting therefor the words "Save as is otherwise expressly provided" and by deleting the word "resident".

The law of Singapore prohibits a marriage where either party is under the age of eighteen unless the solemnization of such marriage was authorised by a licence granted by the Minister.

In the present case both the contracting parties are at the time of their marriage Citizens of Singapore, living in Singapore and domiciled in Singapore, the laws of which prohibit their marriage. In my opinion this imposes on the respondent a personal incapacity and renders invalid their marriage which was solemnized in Johore Bahru.

In *Brook* v. *Brook*[1] a marriage was celebrated during a temporary residence in Denmark between an English widower and the sister of his deceased wife, such a marriage being null and void in England but by the law of Denmark marriages were permitted between persons so related by affinity. It was held that the law of the country in which a marriage was solemnized cannot give validity to a marriage prohibited by the laws of the country of the domicile and allegiance of the contracting parties and therefore the marriage was not valid.

Sir John Stuart V.C. said (at page 766):

"This incapacity is personal and, being impressed upon the persons by the law of their own country, cannot be cast off or removed by mere change of place. It is a personal quality which, according to Huber and other jurists, travels round

everywhere with the persons; inseparable from them as their shadows."

The judgment in that case was upheld by the House of Lords, (11 E.R. 703). Lord Campbell L.C. said at page 709:

"There can be no doubt of this general rule, that a foreign marriage, valid according to the law of a country where it is celebrated, is good everywhere. But while the forms of entering into the contract of marriage are to be regulated by the *lex loci contractus*, the law of the country in which it is celebrated, the essentials of the contract depend upon the *lex domicilii*, the law of the country in which the parties are domiciled at the time of the marriage, and in which the matrimonial residence is contemplated. Although the forms of celebrating the foreign marriage may be different from those required by the law of the country of domicile, the marriage may be good everywhere. But if the contract of marriage is such, in essentials, as to be contrary to the law of the country of domicile, and it is declared void by that law, it is to be regarded as void in the country of domicile, though not contrary to the law of the country in which it was celebrated." Later, he said (at page 711): "It is quite obvious that no civilized state can allow its domiciled subjects or citizens, by making a temporary visit to a foreign country to enter into a contract, to be performed in the place of domicile, if the contract is forbidden by the law of the place of domicile as contrary to religion, or morality, or to any of its fundamental institutions."

In view of the authorities it is clear that the marriage in this case is not valid. The petition for divorce is, therefore, dismissed.

Petition dismissed.

Solicitors: *Rikhraj & Co.*

MALAYSIAN REPORTS

GAN HAY CHONG v. SIOW KIAN YUH & ANOR.

[F.C. (Suffian L.P., Ong Hock Sim F.J. and Chang Min Tat J.) April 1, 1975]

[Kuala Lumpur — Federal Court Civil Appeal No. 154 of 1974]

Practice and Procedure — Appeal — Application for extension of time within which to file memorandum of appeal and to serve it on respondents — Mistake of solicitor — Insufficient ground in the circumstances — R.S.C. 1975, O.59 r.2.

This was an appeal from the decision of Ajaib Singh J. reported in [1975] 1 M.L.J. 41 dismissing the application of the appellant for extension of time to file the memorandum of appeal and to serve it on the respondents.

Held, dismissing the appeal: the mistake of the appellant's solicitors in the circumstances of this case, did not constitute a sufficient ground for granting the extension of time.

Cases referred to:-

(1) *Ratnam* v. *Cumarasamy & Anor.* [1965] 1 M.L.J. 228.

(2) *Ahmad bin Yahaya & Anor.* v. *Ahmad bin Sulaiman* [1972] 2 M.L.J. 109.

(3) *Cheah Teong Tat* v. *Ho Gee Seng & Ors.* [1974] 1 M.L.J. 58.

(4) *Chin Hua Sawmill Co. Sdn. Bhd.* v. *Tuan Yusoff bin Tuan Mohamed* [1974] M.L.J. 58.

(5) *Chong Kuong Ying & Ors.* v. *Louis Lavagna* [1972] 1 M.L.J. 180.

FEDERAL COURT.

Atma Singh Gill for the appellant.

S. G. Thakurta for the respondent.

Chang Min Tat J.: This appeal is from the refusal of the learned trial judge to exercise his discretion in favour of the appellant who on his advice had applied to the High Court for extension of time for filing and serving the memorandum of appeal.

Judgment was given against the appellant on June 8, 1972. Notice of appeal was filed on June 14, 1972, well within the period of the 14 days specified in Order XXXIX, rule 2(3) of the Subordinate Court Rules and also within time, served on the respondent.

Consequent on this notice of appeal, the Sessions Court at Kuala Pilah, the court appealed from, set about preparing the appeal record as laid down in Order XXXIX rule 3. This particular rule is in these words:—

"R.3(1). When the appellant has complied with the requirements of rule 2 of this Order ..., the court appealed from shall prepare the requisite number of copies of the appeal record and the appeal record shall contain copies of....

(2). As soon as the appeal record is ready the court appealed from shall serve the appellant with a notice in Form 40."

The notice under Order XXXIX rule 3(2) was served on the appellant's solicitors on May 23, 1974 but they were not on that day served with the appeal record. That was of course understandable. It was clear from the notice which was a specified form, being Form 40 of the Subordinate Court Rules, that they were only advised that the record was ready and that the costs of preparing such record were a certain sum and due by them to the court. It was only upon their request and subject to the payment of such costs that the Registrar of the court appealed from would supply them with a copy of the appeal record and upon payment of such additional costs as were required to be paid, with sufficient additional copies for service on the other side, as might be required.